

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.20631 of 1998

Dated: 16-07-2007

Between:

Rock Church Ministries
(Reg.No.321/79) a registered Society,
rep. by its President Smt. Rachel Jyothi Komanapalli,
w/o Dr. Ernest P. Komanapalli,
r/o H.No.10-5-76/1,
First Lancer Road, Masab Tank,
Hyderabad.

... Petitioner

and

1. The Mandal Revenue Officer,
Malkajgiri Mandal,
Malkajgiri,
Rangareddy District and 5 others.

... Respondents

ORDER:

Petitioner, a Christian Religious Organization, represented by its President, filed the present writ petition stating that it has purchased agricultural land in an extent of Ac.1-30 guntas in Sy.Nos.88 and 90 of Safilguda village in Malkajgiri Municipality under two registered sale deeds dated 28-03-1995 and 29-03-1995, comprising of Acs.1-00 and

Ac.0-30 guntas respectively from one Dr. Prema Menon and Smt. Latha Ghosh and since then it has been in peaceful possession and enjoyment of the land in question. It has filed an application on 18-07-1996 to grant permission for construction of a Church and School building in the land in question. Sixth respondent – District Collector on consideration of the recommendations made by first respondent – Mandal Revenue Officer and the Superintendent of Police, Ranga Reddy District accorded necessary permission vide proceedings dated 29-04-1997 for construction of a Church and School Building subject to fulfillment of certain conditions as required under norms of HUDA and Municipality. In the light of the said permission, it got a compound wall constructed on three sides before commencement of the construction of the Church and School building. While so, on 25-02-1998 first respondent visited the site and arbitrarily got demolished the compound wall. Assailing the said action, it has filed W.P.No.5527 of 1998 and the same was disposed of by this Court on 03-03-1998 with a direction to first respondent not to interfere or meddle with the possession and enjoyment of the land in question, without recourse to law and without initiating necessary proceedings under any enabling statute and without notice to petitioner. In the said order it was also observed that the question of restoration of wall by first respondent cannot be adjudicated under Articles 226 and 227 of the Constitution of India, but, however, given liberty to approach the competent Civil Court. Even thereafter, first respondent in collusion with other respondents started interfering with the possession and enjoyment of the land in question. Be that as it may, it has applied for permission for construction of compound wall in the land in question and the same was refused by second respondent vide proceedings bearing No.G2/433/97, dated 15-06-1998 on the ground that the land in question is considered as water beds as per Zonal Development Plan. In the said proceedings, it is stated that sixth respondent passed an order vide

proceedings No.C5/1323/98, dated 17-04-1998. Assailing the said orders, it has approached this Court and filed the present writ petition stating that it is not aware of any such order alleged to have been passed by sixth respondent and the said proceedings are *non est* in the eye of law.

2. In the counter affidavit filed on behalf of respondents 2 to 4, while denying the averments made in the affidavit filed in support of the writ petition, it is stated that the Municipality has issued a provisional order notice bearing No.G/TPS.III/98, dated 16-02-1998, and since nobody was present at the site, the same was pasted to the wall on 18-02-1998 and that a confirmation notice was also issued to petitioner through C.O. notice No.G/TPS.III/98, dated 26-02-1998 and the same was pasted. It is further stated that as petitioner has not submitted any reply to the above notice, unauthorized construction made by petitioner was removed as per Rules.

3. Heard learned counsel for the parties.

4. One of the main contentions of Sri M. R. K. Chowdary, learned senior counsel appearing for petitioner is that the notice as provided for under Section 228 of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act') was not at all served on petitioner, and as such the said order i.e., the provisional order notice dated 16-02-1998 and the confirmation order notice dated 26-02-1998 are bad in law. Of course, it is the further contention of the learned senior counsel for petitioner that the land in question, where petitioner wanted to build a Church and a School building cannot be termed as a water body as mentioned in the Zonal Development Plan of Malkajgiri Municipality. From a perusal of the counter affidavit it is clear that the provisional notice as well as the

confirmation notice was not served on petitioner, as he was not available. According to respondents 2 to 4 as petitioner was not available, the said notices were pasted on the wall, which was sought to be demolished and subsequently the said compound wall was demolished. Hence, it cannot be said that there is notice to petitioner. In the light of this finding, this Court is not going into the other contention raised by learned counsel for petitioner that either under Section 228 of the Act or under Section 42 of the A.P. Urban Areas (Development) Act, 1975, nothing shall not be done without issuing a show cause notice and without affording reasonable opportunity to the person concerned. Evidently in the case on hand, there is no notice to petitioner. Hence, this Court is of the view the said provisional notice and confirmation dated 16-02-1998 and 26-02-1998 respectively are contrary to the statutory requirement and are liable to be set aside.

5. Accordingly, the writ petition is allowed and the provisional notice dated 16-02-1998 and the confirmation notice dated 26-06-1998 are set aside. No costs.

However, the respondent Municipality is hereby directed to issue a notice as provided for under Section 228 of the Act read with Section 42 of the Andhra Pradesh Urban Areas (Development) Act, 1975 within a period of four weeks from the date of receipt of a copy of the order. Petitioner shall not avoid receipt of the said notice, and after receipt of such notice; it may offer his explanation as to why and how it is entitled to the land in question. After receipt of the said explanation, respondent Municipality may pass appropriate orders in accordance with law.

JUSTICE GOPALAKRISHNA TAMADA

Dt.16-07-2007
GLV

